



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET, N.E.
ATLANTA, GEORGIA 30365

9/22/89

Via Telecopy

Mr. Russell V. Randle
Patton, Boggs & Blow
2550 M. Street N.W.
Washington, D.C. 20037-1350

RE: Collierville Site

Privileged communication in furtherance of settlement

Dear Mr. Randle:

This letter follows our conversation yesterday regarding the proposed consent order in the above-referenced case. Specifically, we discussed provisions addressing indemnity, the effective date of the proposed order, the administrative record, and reimbursement of costs.

1. Indemnity

We have agreed to modify the first sentence in the paragraph addressing indemnity as follows:

The Respondent agrees to indemnify and save and hold the United States Government, its agencies, departments, agents, and employees, harmless from any and all claims or causes of action arising from or on account of any acts or omissions of Respondent, its employees, agents, servants, trustees, successors, or assigns, or of any other persons acting on behalf of Respondent, including but not limited to firms, corporations, contractors, or consultants engaged in carrying out activities pursuant to this Consent Order.

2. Effective date

A second sentence will be inserted in the first paragraph of the section defining the effective date of the order. That sentence will read as follows:

Respondent's time to act upon this order shall begin upon actual receipt of that approval.



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3. Administrative record

The language originally proposed by the Agency for this section will remain.

4. Reimbursement of costs

The initial accounting sent to Respondent of EPA oversight costs referred to in the cost reimbursement section of the proposed Consent Order shall consist of EPA's certified Agency Financial Management System summary data (SPUR Reports) and copies of contractor invoices for any contractor costs included in that accounting. Respondent will retain the right under that section to request the financial documents underlying the SPUR report.

For clarity, I have moved the last sentence of the first paragraph of the cost reimbursement section so that it becomes the third sentence of that paragraph. The sentence which then becomes the last sentence of that paragraph shall be modified as we agreed, so that both those sentences together will read as follows:

For EPA costs related to the site incurred prior to the effective date of this Order, EPA may recover all such costs under this provision as if those costs were oversight costs. For purposes of this Order, oversight costs shall also include EPA contractor costs incurred in connection with the review of any draft and final work plans, draft and final QAPP, draft and final health and safety plans, and draft and final sampling plans incurred prior to the effective date of this Order.

The first sentence of the second paragraph of cost reimbursement section of the proposed Consent Order shall be modified as follows:

Respondent shall pay undisputed items of cost within 45 days of receipt of EPA's accounting and shall either request specific additional information as to disputed cost items within 45 days or indicate in writing its legal or factual basis for disputing such items.

Respondent is not foreclosed by this Order from contending in the dispute resolution process that disputed costs were improperly or illegally incurred for any reason. EPA retains

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the right to decide, in dispute resolution, which items are properly incurred and does not hereby modify its right to recover costs as set forth in the final paragraph of the cost reimbursement section.

Please call me after you have had an opportunity to review this letter. I will be forwarding a copy of the proposed consent decree, with all agreed upon changes, to your office.

Sincerely yours,

Carol F. Baschon
Assistant Regional Counsel